

United States Senate

WASHINGTON, DC 20510

April 18, 2018

274

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Pai:

We write to urge you to ensure that key robocall and robotext protections under the Telephone Consumer Protection Act (TCPA) are in effect. Recently, the D.C. Circuit Court of Appeals struck down portions of a 2015 Federal Communications Commission (FCC) Omnibus Declaratory Ruling and Order limiting the definition of automatic telephone dialing systems (auto dialers), which are technologies that can be used to rapidly call and text large groups of consumers. The ruling also vacated rules discouraging callers from making more than one unwanted call or text to a reassigned number. While the Court maintained the right to revoke consent, the Court's ruling could be interpreted to suggest that callers could limit consumers' method to revoke consent to receive robocalls and robotexts through provisions buried in contracts or service agreements. This interpretation would upend the meaning and the goals of the TCPA.

In an era when the onslaught of unwanted and abusive robocalls is on the rise, we are concerned that the absence of these core protections could result in even more invasive calls and texts. Without swift and robust action by the FCC to ensure these sensible protections are in place, consumers may lose the right to both provide and revoke consent, subjecting them to a deluge of unwanted calls and texts. We respectfully request that you adopt the following important consumer safeguards:

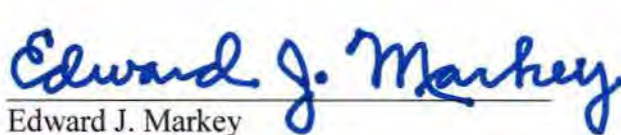
- *Comprehensive Auto Dialer System Definition* – When Congress passed the TCPA in 1991, one goal was clear: whether at home or on their mobile phones, consumers should not be subject to intrusive and unsolicited robocalls and robotexts. While technology has changed, that key goal has not. We urge you to establish a comprehensive definition of the term auto dialer, ensuring calling parties using automated dialing equipment to make calls or texts en masse must first obtain affirmative consent from consumers.
- *Reassigned Number Protections* – Periodically, consumers receive unwanted robocalls and robotexts because the previous holder of the phone number, not the current holder, provided consent. Calls and texts to reassigned numbers are both a nuisance and a clear violation of the TCPA. We encourage you to maintain aggressive protections restricting unwanted calls and texts to reassigned numbers, and ensure that callers face liabilities for these illegal calls and texts in any future TCPA order or rulemaking.
- *Revocation of Consent* – Consent is the cornerstone of the TCPA, for it affirms that consumers have the right to avoid and stop receiving unwanted calls and texts. This fundamental right is not suspended upon initially providing consent. Rather, consumers

should always have a reasonable means to revoke consent at any time should they no longer wish to receive robocalls and robotexts. We respectfully request that you reiterate that consumers always have the right to revoke consent, regardless of any contractual clauses that may be included in user agreements.

It is the FCC's obligation to use its existing authority to reestablish robust, enforceable protections to enhance the precious zone of privacy created by the law. We urge you to fulfill your statutory obligations to establish these important protections.

Thank you for your attention to this important matter. We respectfully request that you provide a written response by May 9, 2018. If you have any questions, please have a member of your staff contact Daniel Greene of Senator Markey's office at 202-224-2742.

Sincerely,



Edward J. Markey
United States Senator



Robert Menendez
United States Senator



Richard Blumenthal
United States Senator



Catherine Cortez Masto
United States Senator



Ron Wyden
United States Senator



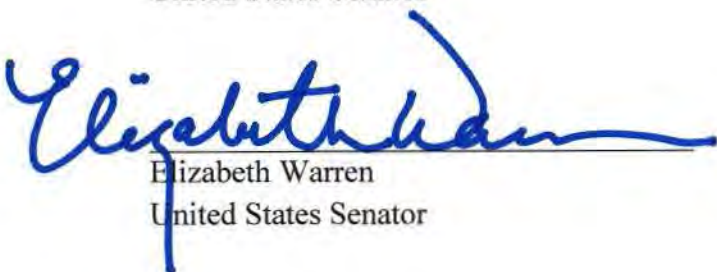
Margaret Wood Hassan
United States Senator



Amy Klobuchar
United States Senator



Tina Smith
United States Senator



Elizabeth Warren
United States Senator



Tammy Baldwin
United States Senator



Kirsten Gillibrand
United States Senator



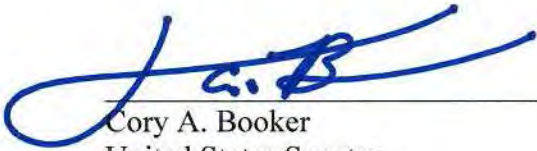
Jack Reed
United States Senator



Chris Van Hollen
United States Senator



Gary C. Peters
United States Senator



Cory A. Booker
United States Senator



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Amy Klobuchar
United States Senate
302 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Klobuchar:

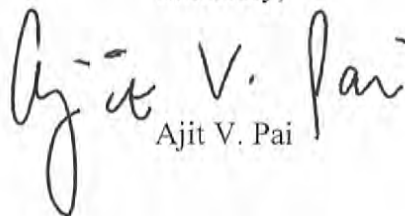
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I expect the court will issue its mandate soon. Once it does, I agree that the Commission must address the definition of an “automatic telephone dialing system,” reassigned number protections, and the scope of a consumer's right to revocation—along with other pending questions such as whether federal contractors are “persons” and the long-stalled Budget Act rules. I look forward to working with my colleagues on addressing these issues while continuing our many other efforts to combat illegal robocalls.

Please let me know if I can be of any further assistance.

Sincerely,


Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Catherine Cortez Masto
United States Senate
B40A Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Cortez Masto:

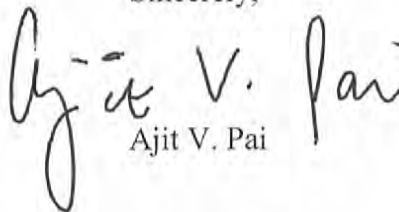
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Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai". The signature is fluid and cursive, with the first name "Ajit" and last name "Pai" being more prominent than the middle initial "V".
Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Chris Van Hollen
United States Senate
B40C Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Van Hollen:

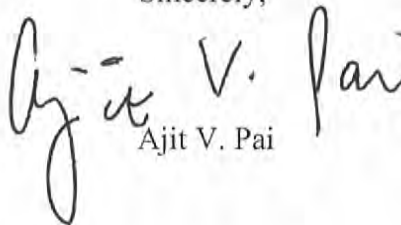
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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Cory Booker
United States Senate
359 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Booker:

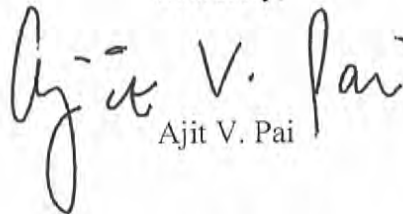
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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Edward J. Markey
United States Senate
255 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Markey:

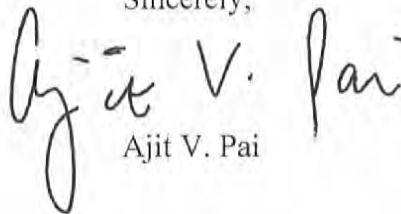
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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Elizabeth Warren
United States Senate
317 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Warren:

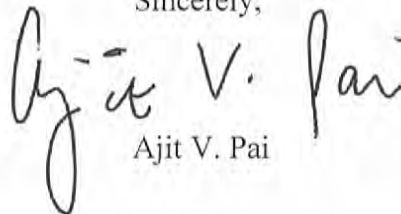
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Gary Peters
United States Senate
724 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Peters:

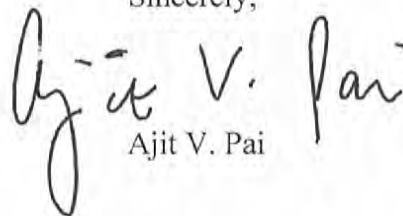
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Jack Reed
United States Senate
728 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Reed:

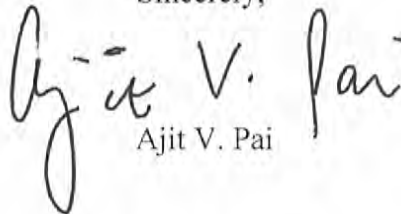
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Sincerely,


Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Kirsten Gillibrand
United States Senate
478 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Gillibrand:

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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Maggie Hassan
United States Senate
B85 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Hassan:

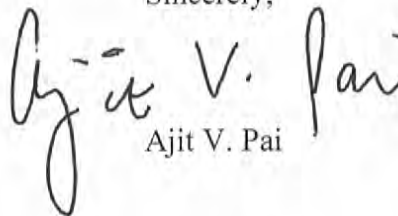
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OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Blumenthal:

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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Robert Menendez
United States Senate
528 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Menendez:

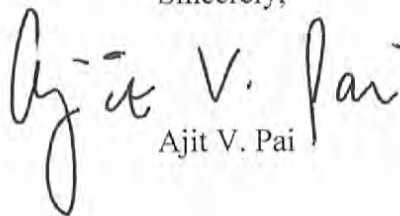
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May 8, 2018

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

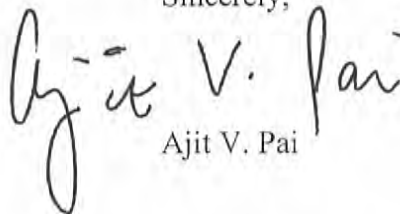
Thank you for your letter regarding the Telephone Consumer Protection Act (TCPA). Unwanted robocalls are consumers' top complaint to the FCC, and we have accordingly made combating illegal robocalls our top consumer protection priority. We have aggressively enforced the TCPA as well as the Truth in Caller ID—leveling over \$200 million in proposed fines against illegal robocallers. In November we authorized carriers to stop certain robocalls at the source, while we pursue the creation of a reassigned numbers database and a robust call-authentication framework. And we have been working with our colleagues at the Federal Trade Commission as well—hosting a policy forum in March and a tech expo of robocall-fighting apps in April.

In your letter, you note the recent decision of the U.S. Court of Appeals for the District of Columbia in *ACA International v. FCC*, which struck down much of the agency's 2015 *TCPA Declaratory Ruling and Order*—including “an expansive interpretation of ‘capacity’ having the apparent effect of embracing any and all smartphones.” Thankfully, the court upheld a consumer's right to revoke consent should they no longer wish to receive robocalls and robotexts—and the ruling does not impact the Commission's current efforts to address illegal robocalls and spoofing.

I expect the court will issue its mandate soon. Once it does, I agree that the Commission must address the definition of an “automatic telephone dialing system,” reassigned number protections, and the scope of a consumer's right to revocation—along with other pending questions such as whether federal contractors are “persons” and the long-stalled Budget Act rules. I look forward to working with my colleagues on addressing these issues while continuing our many other efforts to combat illegal robocalls.

Please let me know if I can be of any further assistance.

Sincerely,



Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Tammy Baldwin
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Baldwin:

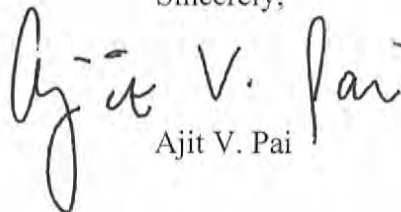
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Ajit V. Pai



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

May 8, 2018

The Honorable Tina Smith
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Smith:

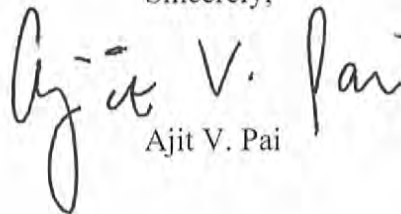
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Sincerely,

A handwritten signature in black ink that reads "Ajit V. Pai". The signature is stylized, with the first name "Ajit" written in a cursive-like script and the last name "Pai" in a more formal, upright script. The middle initial "V." is written in a simple, clear font between the first and last names.
Ajit V. Pai